

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Amendments to Commission Publishing Rules

Docket No. RM2016-5

NOTICE OF PROPOSED RULEMAKING REGARDING
MINOR AMENDMENTS TO COMMISSION RULES REGARDING
PROPOSED MODIFICATIONS TO THE MAIL CLASSIFICATION SCHEDULE

(Issued January 20, 2016)

I. BACKGROUND

The Postal Regulatory Commission (Commission) establishes a rulemaking docket pursuant to its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006), to consider amendments to the Commission's rules concerning the product lists, 39 CFR part 3020. The proposed amendments make minor changes to rules that obligate the Commission to publish, in the *Federal Register*, the initial proposals from the Postal Service requesting to modify the product lists published in the Mail Classification Schedule (MCS) and draft modifications to the MCS approved by the Commission. There is no statutory requirement that the Commission publish these notices and orders. Specifically the proposed rules remove the Commission's obligation to publish duplicative filings: (1) the initial notices and orders identifying a Postal Service request to modify the MCS,

which are duplicative of the Postal Service notices/requests to modify the MCS; and (2) the orders identifying draft MCS changes approved by the Commission but not yet finalized in a modification to the MCS, which are duplicative of the quarterly MCS update. As required, pursuant to § 3020.14,¹ the Commission will continue to publish the modified MCS (as opposed to its draft) in the *Federal Register*.

II. PROPOSED CHANGES TO THE PUBLISHING REQUIREMENTS OF PRODUCT LISTS UNDER 39 CFR PART 3020

The changes proposed in this Order eliminate the requirements in the Commission's regulations that the Commission publish notices and final orders regarding proposed modifications and draft changes to the competitive and market dominant products of the MCS in the *Federal Register*.

The Commission must publish all actual modifications to the MCS in the *Federal Register*.² The Commission may eliminate publishing such notices and final orders regarding competitive and market dominant product modifications to the MCS in the *Federal Register* because neither constitutes an actual modification to the MCS.

The MCS is an interpretive rule, as it serves an advisory function of explaining how the Postal Service categorizes mail products and assures the Postal Service will provide a consistent and uniform interpretation of these products. The Commission's notice-and-comment requirements, based on 5 U.S.C. 553, do not apply to interpretive rules.³ Because the Postal Service is required by statute to publish its proposed changes to the MCS in the *Federal Register*,⁴ a re-publication by the Commission is

¹ "Whenever the Postal Regulatory Commission modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the *Federal Register*." 39 CFR 3020.14; 39 U.S.C. 3642(d)(1).

² 39 CFR 3020.14; 39 U.S.C. 3642(d)(1).

³ 5 U.S.C. 553(b)(3)(A).

⁴ 39 U.S.C. 3642(d)(1).

duplicative and not required by statute.⁵ Similarly, again because the MCS is an interpretive rule, the Commission is not obligated to provide notice-and-comment for modifications proposed by itself or third parties, such as the Public Representative or users of the mail.⁶

All actual changes on the MCS take effect only when the Commission issues the revised MCS (based on the draft). The Commission's final orders regarding proposed changes to the MCS state whether the change has been approved by the Commission and adds the change to a working draft of the MCS that can be found on the Commission's website. The working draft does not constitute a revised MCS.⁷ The Commission is only obligated to publish actual changes on interpretive rules in the *Federal Register*.⁸ An actual MCS modification occurs only when the Commission incorporates all the changes from the working draft into a final product and publishes the revised MCS in the *Federal Register*. Currently, the Commission issues a revised MCS on a quarterly basis.

Proposed changes to 39 CFR part 3020 related to the *Federal Register* publication requirement are reproduced below the Secretary's signature on this Order.

III. INVITATION TO COMMENT

Interested persons are invited to comment on the proposed changes to part 3020. Comments are due within 30 days of the date of publication of this notice in the *Federal Register*.

⁵ See 39 U.S.C. 3642, which only requires the Commission to publish actual changes, not proposed changes to the MCS in the *Federal Register*.

⁶ See 5 U.S.C. 553(b)(3)(A) and 39 U.S.C. 3642(d)(2). This does not prohibit the Commission from choosing, on its own accord, to publish such proposals to give the public opportunity for notice-and-comment.

⁷ The redline draft of the MCS is available to the public on the Commission's website.

⁸ 39 CFR 3020.14; 39 U.S.C. 3642.

Pursuant to 39 U.S.C. 505, Katrina R. Martinez is designated as the Public Representative in this proceeding to represent the interests of the general public.

IV. ORDERING PARAGRAPHS

It is ordered:

1. Docket No. RM2016-5 is established for the purpose of receiving comments on the proposed changes to part 3020, as discussed in this Order.
2. Interested parties may submit comments no later than 30 days from the date of publication of this notice in the *Federal Register*.
3. Pursuant to 39 U.S.C. 505, Katrina R. Martinez is appointed to serve as Public Representative in this proceeding.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble
Secretary

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

Part 3020—PRODUCT LISTS

1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

1. Amend § 3020.33 by revising the introductory text and paragraph (d), removing paragraph (e), and redesignating paragraph (f) as paragraph (e). The revisions read as follows:

§ 3020.33 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list and post the filing on its Web site. The notice shall include:

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket; and

(e) Such other information as the Commission deems appropriate.

2. Amend § 3020.53 by revising the introductory text and paragraph (d), removing paragraph (e), and redesignating paragraph (f) as paragraph (e). The revisions read as follows:

§ 3020.53 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list and post the filing on its Web site. The notice shall include:

(d) The identification of an Office of the Commission to represent the interests of the general public in the docket; and

(e) Such other information as the Commission deems appropriate.

3. Amend § 3020.82 by revising paragraphs (c) and (d), and removing paragraph (e). The revisions read as follows:

§ 3020.82 Docket and notice of material changes to product descriptions.

(c) Publish notice of the request on its Web site; and

(d) Designate an officer of the Commission to represent the interests of the general public in the docket.

(e) [Removed]

4. Amend § 3020.91 by revising paragraphs (c) and (d), and removing paragraph (e). The revisions read as follows:

§ 3020.91 Docket and notice of minor corrections to product descriptions.

- (c) Publish notice of the proposal on its Web site; and
- (d) Designate an officer of the Commission to represent the interests of the general public in the docket.
- (e) [Removed]